



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

B-175902

November 17, 1972

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United States Steel  
International (New York), Inc.  
100 Church Street  
P.O. Box 75  
New York, New York 10008

Attention: Mr. J. R. Bert  
Manager of Sales-United States

Gentlemen:

This is in reference to your letters of May 5 and June 26, 1972, protesting the award of a contract to Davis Wire Corporation for barbed wire coils for shipment to Vietnam and Thailand, under Invitation for Bids (IFB) No. DSA 700-72-B-1748, issued February 29, 1972, by the Defense Supply Agency, Columbus, Ohio. Your protest is on the grounds that the method of evaluating the bids received in response to the IFB was improper, prejudicial, contrary to the expressed provisions of the invitation, and not in the best interests of the Government.

Eight offers were received in response to the IFB, including your offer which was submitted on an f.o.b. origin basis.

It was determined by the contracting officer after evaluation of the bids that Items 1 and 2 were to be awarded to Davis Wire Corporation and Items 3 and 4 to your firm. The awards were made on May 18, 1972, after notification to this Office, in accordance with paragraph 2-407.8(b)(3)(1) of the Armed Services Procurement Regulation (ASPR).

In a telephone conversation of April 18, 1972, and in the contracting officer's letter of April 27, 1972, denying your protest, you were informed that the f.o.b. origin prices were being evaluated by adding the lowest land transportation costs in accordance with the provisions of clause D06 (see ASPR 2-201(a) Sec. D (vi)) of the invitation, which reads as follows:

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"Land methods of transportation by regulated common carrier are normal means of transportation used by the Government for shipment within the United States (excluding Alaska and Hawaii). Accordingly, for the purpose of evaluating bids (or proposals), only such methods will be considered in establishing the cost of transportation between bidder's (or offeror's) shipping point and destination (tentative or firm, whichever is applicable), in the United States (excluding Alaska and Hawaii). Such transportation cost will be added to the bid (or proposal) price in determining the overall cost of the supplies to the Government. When tentative destinations are indicated, they will be used only for evaluation purposes, the Government having the right to utilize any other means of transportation or any other destination at the time of shipment."

ASPR 19-208.2(c) provides that clause D06, quoted above, may be modified when it is appropriate to use methods of transportation other than land transportation in evaluating bids or proposals. Although the specific method of modifying clause D06 is not set forth in the ASPR, you contend that it is logical to assume that it could be done by an additional special clause such as clause B15. (ASPR 2-201(a) Sec. B (xiv)). Clause B15 provides that:

"Bids (or proposals) will be evaluated and awards made on the basis of the lowest laid down cost to the Government at the overseas port of discharge, via methods and ports compatible with required delivery dates and conditions affecting transportation known at the time of evaluation. Included in this evaluation, in addition to the f.o.b. origin price of the item, will be the inland transportation costs from the point of origin in the United States to the port of loading, port handling charges at the point of loading, and the ocean shipping costs from the United States port of loading to the overseas port of discharge. ... The Government may designate the mode of routing of shipment and may load from other than those ports specified for evaluation purposes."

It is your position that clause DO6 of the solicitation merely sets forth the general rule with respect to evaluation of f.o.b. origin bids, and that clause B15, which was intentionally incorporated in the instant IFB by an affirmative act of the contracting agency, should be considered as modifying the provisions of clause DO6, which were automatically included in the invitation.

You contend that since clause B15 modified clause DO6, the term "lowest laid down cost to the Government" used in clause B15 is not restricted merely to the cost of land methods of transportation but instead applies to any or all inland transportation costs, including barges; and since, in this instance, barge transportation provides the lowest laid down cost to the Government, your bid should have been evaluated on the basis of such barge transportation costs, which would have resulted in your bid being the lowest for Items 1 and 2.

While the language of clause B15 of the invitation standing alone might be subject to the interpretation advanced by you, the intent and meaning of an invitation for bids is not to be determined by consideration of an isolated section or provision but, rather, from consideration of the invitation in its entirety. 17A C.J.S. Contracts sec. 297.

Also, each provision must be construed in its relationship to other provisions and in the light of the general purpose intended to be accomplished. 39 Comp. Gen. 17, 19 (1959); B-171396, March 26, 1971. Furthermore, it is a well-established rule concerning the construction of such documents that an interpretation which gives a reasonable meaning to all parts of the instrument will be given preference over one which leaves a portion of it useless, inoperative, void, meaningless or superfluous. B-167566, December 4, 1969.

If your interpretation of the IFB were adopted, it is apparent that clause DO6 would be subordinated to clause B15 and, in fact, would be superfluous. The two clauses must be read in conjunction with one another. Clause B15 provides, in part:

"Bids will be evaluated and awards made on the basis of the lowest laid down cost to the Government at the overseas port of discharge ... Included in this

evaluation in addition to the f.o.b. origin price of the item will be the inland transportation costs from the point of origin in the United States to the port of loading ..."

It is clear that the quoted sentences from clause B15, which do not state how inland shipping costs will be determined, are controlled by clause D06 which does provide how those costs will be determined, i.e., through the use of land methods of transportation. Of course, the words "lowest laid down cost to the Government" cannot be ignored. These words apply, however, only to those transportation methods contemplated under the terms of the invitation, i.e., land methods of transportation. Thus, when read together, it is our view that the two clauses indicate that bids must be evaluated on the lowest laid down cost to the Government based on, among other things, land transportation for inland shipping costs.

In addition, we believe it is more logical to assume that had the Defense Supply Agency intended to modify clause D06, so as to allow evaluation of bids based on the barge method of transportation, it would have done so by changing that clause to specifically provide for such evaluation. In this connection, we note that the contracting officer stated in his report of June 1, 1972, that it had been previously determined it was not feasible to amend clause D06 to include barge transportation. Although the pertinent ASPR provisions do not specify the method for "modifying" clause D06, we regard the use of such term as contemplating an actual change in the wording of the clause itself. See 19 Comp. Gen. 662 (1940), at page 666, wherein we defined "modify" as meaning "to change somewhat the form or qualities of; to alter somewhat." To attempt to modify an invitation provision, as you suggest, by adding another provision which is inconsistent with the first provision (and not covered by paragraph 19, Order of Precedence, Standard Form 33A) would, in our opinion, only create an ambiguity in the invitation.

It is the position of the Defense Supply Agency that even though it was learned after bid opening and prior to award that barge shipments using rates more favorable to you would result in a lower evaluated cost, the relatively small cost difference and the urgency of the requirement made resolicitation with revised evaluation provisions an unacceptable alternative. The record provides no basis on which this Office can conclude that such determination constituted an unreasonable or arbitrary action by the agency so as to affect the

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validity of the awards, which were made in accordance with the IFB provisions. Although the agency has reported that further consideration is being given to the possible use of solicitation provisions permitting the use of barge rates for evaluation in future purchases of barbed wire, its decision can have no effect on the subject procurement.

In view of the foregoing, it would appear that consideration of the other points raised in your protest is unnecessary.

Accordingly, since we find no legal basis for this Office to disturb the award made to Davis Wire Corporation, your protest is denied.

Very truly yours,

R.P.KELLER

Deputy Comptroller General  
of the United States